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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/05/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/844,627

Applicant(s)

ABBE, NANCY A.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 13-17, 19, 20, 24 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-17, 19, 20, 24 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3727

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- ① Claims 1-9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 states that a portion of the outer wall is translucent in line 8. Translucent is defined as transmitting light but causing sufficient diffusion to prevent perception of distinct images. In lines 8 and 9 of claim 1, it is stated that a label placed in the label area may be read (through the outer wall). This doesn't seem possible since the translucence of the outer wall would distort the image to prevent perception. Claim 26 has similar claim language. Changing the word "translucent" to "transparent" would eliminate this rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- ② Claims 1-6, 9, 13, 15, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Oxley.

Oxley discloses a food storage unit comprising a container with an inner wall (backing partition F) and an outer translucent/transparent wall (window E) having a fixed geometric relationship when assembled (the inner and outer walls don't move with respect to each other unless the user intentionally wants to disassemble the unit), the inner and outer walls forming a

Art Unit: 3727

channel (the inner surface of the outer wall and the outer surface of the inner wall forming side walls of the channel and the upper surface of either the bottom of the box (D) or the lower shelf (A) forming the bottom of the channel) there between, the channel includes a label container area that is accessible by a user for the insertion of a label (article C) therein, at least one label support member [either of the two lower shelves (A)] that is located within the channel and is physically attached to the inner and outer walls since the box (D) and window (E) seem to be press fit with backing partition (F) and shelves (A), and a top lid.

③ Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morris ('059)(Morris 1) and Morris ('151)(Morris 2).

④ Claims 1, 3, 5, 9, 15, 19, 24 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pichereau.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

⑤ Claims 1-6, 9, 13-17, 19, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barhite in view of Dorney and Greiner ('918)(Greiner).

Barhite discloses the invention except for the translucent/transparent outer wall. Dorney discloses a double wall cup having an outer wall of translucent material. Greiner discloses a double wall bowl with an outer transparent wall. It would have been obvious to modify the material of the outer wall of Barhite to be either translucent or transparent in order to see an item placed within the space between the inner and outer walls of a container.

Art Unit: 3727

- (6) Claims 1-6, 9, 13, 15, 20, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooster in view of Dorney and Greiner ('918)(Greiner).

Wooster discloses the invention except for the translucent/transparent outer wall. Dorney discloses a double wall cup having an outer wall of translucent material. Greiner discloses a double wall bowl with an outer transparent wall. It would have been obvious to modify the material of the outer wall of Wooster to be translucent or transparent in order to see an item placed within the space between the inner and outer walls of a container.

- (7) Claims 1-6, 9, 13, 15, 19, 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oxley in view of Wooster.

This rejection is made if it is deemed that Oxley doesn't anticipate claims 1-6, 9, 13, 15, 19, 20 and 24.

Oxley discloses the invention except for the label support member being physically attached by a direct connection to the inner and outer walls of the container and the fixed geometric relationship. Wooster teaches direct connection of the label support member to the outer wall because the L-shaped cross section of part G forms both the outer wall and the label support member and by a direct connection to the inner wall (F) by a fillet weld shown in the cross section of Fig. 2. It would have been obvious to modify Oxley to have direct connections of similar form as motivated by a need to have parts that can't be disassembled easily. The direct connections would provide the fixed geometric relationship and physical attachment required by the claims. It would have been obvious to remove the uppermost shelf (A) or the two upper shelves (A) in order to provide access by another means since the direct connections such as welds and adjacent parts being formed as one piece do not make access as easy.

Art Unit: 3727

(8)

Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wooster in view of Dorney and Greiner as applied to claims 1 and 5 above, and further in view of Hepburn.

The combination discloses the invention except for expanded polystyrene in the inaccessible portion of the channel and the outer wall being smaller in dimension at the bottom than at the top. Hepburn discloses in Fig. 5 and 6 a cooler wherein the inner and outer walls define a channel there between with expanded polystyrene located in a lower region of the cooler, the outer wall is tapered to be more narrow at the bottom. It would have been obvious to add expanded polystyrene in order to increase the insulation value to prevent food spoilage. It would have been obvious to taper the walls in order to nest the containers to form a more compact way to store a series of empty containers. Also, no criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.

(9)

Claims 7, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 1 or Morris 2 in view of Hepburn.

Morris 1 and Morris 2 both discloses the invention except for expanded polystyrene in the inaccessible portion of the channel and the outer wall being smaller in dimension at the bottom than at the top. Hepburn discloses in Fig. 5 and 6 a cooler wherein the inner and outer walls define a channel there between with expanded polystyrene located in a lower region of the cooler, the outer wall is tapered to be more narrow at the bottom. It would have been obvious to add expanded polystyrene in order to increase the insulation value to prevent food spoilage. It

Art Unit: 3727

would have been obvious to taper the walls in order to nest the containers to form a more compact way to store a series of empty containers. Also, no criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.

(10) Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oxley or Oxley in view of Wooster.

Oxley discloses the invention except for the outer wall being smaller in dimension at the bottom than at the top. No criticality is associated with the slight dimensional change shown by the drawings of the present invention. It would have been obvious by design choice to slightly vary dimensions of the container so that the outer wall is slightly smaller in dimension at the bottom than at the top.

(11) Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris 1 or Morris 2 in view of Barhite.

Morris 1 and Morris 2 disclose the invention except for the lid ridge. Barhite teaches a lid ridge. It would have been obvious to add the lid ridge to provide a tighter connection between the lid and the container.

Applicant's arguments filed April 21, 2003 have been fully considered but they are not persuasive.

Applicant traverses the 112, first paragraph rejection. The examiner's definition of translucent is provided by the American Heritage Dictionary of the English Language, Third Edition copyright ©1992 by Houghton Mifflin Company. Applicant's usage of translucent to

Art Unit: 3727

represent a material that when viewed through objects appear clearly visible is repugnant to the well known meaning of the term "translucent."

Applicant traverses the Oxley anticipatory rejection. Oxley provides a label as article (C) and a lid as shown in Fig. 1 and 2 in a position sealing the box in a closed configuration. Applicant states that the inner and outer walls do not have a fixed geometric relationship because the backing partition F is removed to access the display area between the partition F and window E. It is certainly true that Oxley operates in this manner, but the claim limitation of a fixed geometric relationship is not precluded by removable parts that may remain indefinitely in their fixed relationship once assembled. Applicant further states that the label support member is not physically attached to the inner and outer walls. It seems that the partition F and shelves A are press fit into position and that such a strong connection provides the physically attached limitation required by the claims. The removability of a part doesn't preclude the fact that a part has a physical attachment.

Applicant traverse the anticipatory rejection of both Morris 1 and Morris 2. Both references disclose food storing. Applicant suggests that the inner walls are removable to gain access to the support sections 41. Even though portions of the device are removable, this alone doesn't preclude the fixed relationship the parts will have once assembled. The press fitting connections of the parts provide the physical attachment required by the claims.

Applicant also traverses the Pichereau anticipatory rejection. Reference sign (a) designates an opening of the central cup. Applicant's conclusion that neither food, ink or anything else may be placed or stored inside the central cup while the sponge-cup cover is being used is faulty. Although lower part (j) fits like an axle in cup (a), there is nothing in the



Art Unit: 3727

disclosure preventing the cup from holding a food item and still perform the act of receiving the lower part (j) and enabling rotation of the cover with the food item contained in the cup. More importantly, nothing precludes the central cup from holding a food item when the cover is removed. Applicant further submits that the cover is not capable of sealing the inkstand in a closed configuration. Even if one compartment is open due to the presence of slot (f), the closing of three other compartments definitely meets the sealed closed requirement claimed.

In response to any argument that applicant sets forth wherein a liquid in the label container area prevents viewing or somehow destroys the label, the examiner submits that the rejection is based upon the container being in a state wherein the label container area is free of liquid such as after the container is formed but before the container is filled with the designated liquid. In cases where the liquid is water, the label can be viewed through the transparent water. In cases where the liquid may not be readily transparent, the label could be situated sufficiently close to the outer wall such that the liquid doesn't interfere with viewing the label. A label may be made of a wide variety of materials which could dissolve in any given liquid. The composition of the label of the invention is not sufficiently claimed such that someone could definitely state that the label is destroyed by a liquid. Water is substantially chemically non-reactive such that paper or plastic or metallic labels do not readily dissolve in water.

Applicant traverses the Barhite in view of Dorney and Greiner rejection. Applicant suggests that if a label were placed within compartment 14 of Barhite, it would be destroyed. Compartment 14 is free of water as shown by Fig. 14. Applicant states that Barhite doesn't suggest the modification. There is no requirement that the primary reference must teach or suggest the modification for proper motivation to be present in a 103 obviousness rejection.

Art Unit: 3727

Applicant submits that the modification of a translucent or transparent wall would destroy the intended purpose of Barhite since (heat) radiation is undesirable. Heat radiation from light is minimal and generally would have a negligible effect on warming the compartment.

Applicant traverses the Wooster in view of Dorney and Greiner rejection for nearly identical reasons as for Barhite in view of Dorney and Greiner. There is no mention of the undesirability of radiation in Wooster.


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

Art Unit: 3727

Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.

  
Stephen Castellano  
Primary Examiner  
Art Unit 3727

June 3, 2003